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28 **ATTORNEYS FOR DEFENDANT S SEOUL SEMICONDUCTOR, INC. AND
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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

Nichia Corporation

Plaintiff,

vs.

Seoul Semiconductor, Ltd., Seoul
Semiconductor, Inc., Creative Technology,
Ltd., Creative Labs, Inc., and Creative
Holdings, Inc.

Defendants.

Case No: 3:06-CV-0162 (MMC)

STIPULATED PROTECTIVE ORDER

Judge: Maxine M. Chesney

1. PURPOSES AND LIMITATIONS

Disclosure and discovery activity in this action are likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation would be warranted. Accordingly, Plaintiff Nichia Corporation, and Defendants Seoul Semiconductor, Ltd. and Seoul Semiconductor, Inc., hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this Order does not confer blanket protections on all disclosures or responses to discovery and that the protection it affords extends only to the limited information or items that are entitled under the applicable legal principles to treatment as confidential. The parties further acknowledge, as set forth in Section 10, below, that this Stipulated Protective Order creates no entitlement to file confidential information under seal; Civil Local Rule 79-5 sets forth the procedures that must be followed and reflects the standards that will be applied when a party seeks permission from the court to file material under seal.

2. DEFINITIONS

2.1. Party: any party to this action, including all of its officers, directors,

employees, consultants, retained experts, and outside counsel (and their support staff).

2.2. Disclosure of Discovery Material: all items or information, regardless of the medium or manner generated, stored, or maintained (including, among other things, testimony, transcripts, or tangible things) that are produced or generated in disclosures or responses to discovery in this matter.

2.3. "Confidential" Information or Items: information (regardless of how generated, stored or maintained) or tangible things that qualify for protection under standards developed under Fed. R. Civ. P. 26(c), including, but not limited to, all information or items, and any copies thereof, that is produced for or disclosed to a Receiving Party, that a Producing Party, including any Party and any non-party producing information or material voluntarily or pursuant to a subpoena or a court order, considers to constitute confidential research, development, technical, financial, or commercial information, whether embodied in physical objects, documents, or the factual knowledge of persons; and that has been so designated by the Producing Party.

2.4. "Highly Confidential - Attorneys' Eyes Only" Information or Items: extremely sensitive "Confidential Information or Items" whose disclosure to another Party or non-party would create a substantial risk of serious injury that could not be avoided by less restrictive means, including, but not limited to, all information or items, and any copies thereof, that is produced for or disclosed to a Receiving Party, that a Producing Party, including any Party and any non-party producing information or material voluntarily or pursuant to a subpoena or a court order, considers to contain trade secrets, proprietary financial or technical data or commercially sensitive competitive information, including, but not limited to, Confidential Information obtained from a non-party pursuant to a current Nondisclosure Agreement ("NDA"), Confidential Information relating to future products not yet commercially released, strategic plans, and settlement agreements or settlement communications, the disclosure of which is likely to cause harm to the competitive position of the Producing Party.

2.5. Receiving Party: a Party that receives Disclosure or Discovery Material

1 from a Producing Party.

2 2.6. Producing Party: a Party or non-party that produces Disclosure or
3 Discovery Material in this action.

4 2.7. Designating Party: a Party or non-party that designates information or
5 items that it produces in disclosures or in responses to discovery as “Confidential” or “Highly
6 Confidential — Attorneys’ Eyes Only.”

7 2.8. Protected Material: any Disclosure or Discovery Material that is
8 designated as “Confidential” or “Highly Confidential – Attorneys’ Eyes Only.”

9 2.9. Outside Counsel: attorneys, as defined below, who are not employees of a
10 Party but who are retained to represent or advise a Party in this action, including supporting
11 clerical personnel employed by the attorneys, such as paralegals, legal translators, legal
12 secretaries, legal clerks, and shorthand reporters, but excluding patent professionals who are not
13 attorneys at law.

14 Outside counsel for Nichia Corporation means U.S. registered attorneys from the law
15 offices of Foley & Lardner, LLP; Kim & Chang; and Abe Law & Patent Firm.

16 Outside counsel for Seoul Semiconductor, Ltd. and Seoul Semiconductor, Inc. means
17 U.S. registered attorney Jennifer Jonak and U.S. registered attorneys from the law offices of
18 Bingham McCutchen LLP and Shin & Kim.

19 2.10. House Counsel: attorneys who are employees of a Party, including
20 supporting clerical personnel employed by the attorneys, such as paralegals, legal translators,
21 legal secretaries, legal clerks, and shorthand reporters.

22 2.11. Counsel (without qualifier): Outside Counsel and House Counsel,
23 including supporting clerical personnel employed by the attorneys, such as paralegals, legal
24 translators, legal secretaries, legal clerks, and shorthand reporters.

25 2.12. Expert: a person with specialized knowledge or experience in a matter
26 pertinent to the litigation who has been retained by a Party or its counsel to serve as an expert
27 witness or as a consultant in this action and who is not a past or a current employee of a Party or
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1 of a competitor of a Party's and who, at the time of retention, is not anticipated to become an
 2 employee of a Party or a competitor of a Party's. This definition includes a professional jury or
 3 trial consultant retained in connection with this litigation.

4 2.13. Professional Vendors: persons or entities retained by a party that provide
 5 litigation support services (e.g., photocopying; videotaping; translating; preparing exhibits or
 6 demonstrations; organizing, storing, retrieving data in any form or medium; etc.) or non-
 7 technical jury or trial consulting services, and their employees and subcontractors.

8 3. SCOPE

9 The protections conferred by this Stipulation and Order cover not only Protected Material
 10 (as defined above), but also any information copied or extracted therefrom, as well as all copies,
 11 excerpts, summaries, or compilations thereof, plus testimony, conversations, or presentations by
 12 parties or counsel to or in court or in other settings that might reveal Protected Material.

13 The following information is not Protected Material:

- 14 (a) any information that at the time of disclosure to the Receiving Party is in
 15 the public domain;
- 16 (b) any information that, after its disclosure to the Receiving Party, becomes
 17 part of the public domain as a result of publication not involving a
 18 violation of this Order;
- 19 (c) any information that the Receiving Party can show by dated written
 20 records was already known to it prior to the disclosure;
- 21 (d) any information that the Receiving Party can show by written records was
 22 received by it after disclosure from a source who obtained the information
 23 lawfully and under no obligation of confidentiality to the Producing Party;
 24 and
- 25 (e) any information which the Receiving Party can show by dated written
 26 records was independently developed by it after the time of disclosure by
 27 personnel who have not had access to the Producing Party's Protected
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1 Material.

2 **4. DURATION**

3 Even after the termination of this litigation, the confidentiality obligations imposed by
4 this Order shall remain in effect until a Designating Party agrees otherwise in writing or a court
5 order otherwise directs.

6 **5. DESIGNATING PROTECTED MATERIAL**

7 **5.1. Exercise of Restraint and Care in Designating Material for Protection.**

8 Each Party or non-party that designates information or items for protection under this Order must
9 take reasonable care to limit any such designation to specific material that qualifies under the
10 appropriate standards. A Designating Party must take reasonable care to designate for protection
11 only those parts of material, documents, items, or oral or written communications that qualify –
12 so that other portions of the material, documents, items, or communications for which protection
13 is not warranted are not swept unjustifiably within the ambit of this Order.

14 Mass, indiscriminate, or routinized designations are prohibited. Designations that are
15 shown to be clearly unjustified, or that have been made for an improper purpose (*e.g.*, to
16 unnecessarily encumber or retard the case development process, or to impose unnecessary
17 expenses and burdens on other parties), expose the Designating Party to sanctions.

18 If it comes to a Party's or a non-party's attention that information or items that it
19 designated for protection do not qualify for protection at all, or do not qualify for the level of
20 protection initially asserted, that Party or non-party must promptly notify all other parties that it
21 is withdrawing the mistaken designation.

22 **5.2. Manner and Timing of Designations.** Except as otherwise provided in this
23 Order (*see, e.g.*, second paragraph of section 5.2(a), below), or as otherwise stipulated or
24 ordered, material that qualifies for protection under this Order must be clearly so designated
25 before the material is disclosed or produced.

26 Designation in conformity with this Order requires:

- 27 (a) for information in documentary form (apart from transcripts of
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1 depositions or other pretrial or trial proceedings), that the Producing Party affix the legend
 2 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" at the top
 3 of each page that contains protected material. If only a portion or portions of the material on a
 4 page qualifies for protection, the Producing Party also must clearly identify the protected
 5 portion(s) (e.g., by making appropriate markings in the margins).

6 A Party or non-party that makes original documents or materials available for inspection
 7 need not designate them for protection until after the inspecting Party has indicated which
 8 material it would like copied and produced. During the inspection and before the designation, all
 9 of the material made available for inspection shall be deemed "CONFIDENTIAL" or "HIGHLY
 10 CONFIDENTIAL – ATTORNEYS' EYES ONLY." After the inspecting Party has identified
 11 the documents it wants copied and produced, the Producing Party must determine which
 12 documents, or portions thereof, qualify for protection under this Order, then, before producing
 13 the specified documents, the Producing Party must affix the appropriate legend
 14 ("CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY") so that
 15 it is conspicuous on each page that contains Protected Material. If only a portion or portions of
 16 the material on a page qualifies for protection, the Producing Party also must clearly identify the
 17 protected portion(s) (e.g., by making appropriate markings in the margins) and must specify, for
 18 each portion, the level of protection being asserted (either "CONFIDENTIAL" or "HIGHLY
 19 CONFIDENTIAL – ATTORNEYS' EYES ONLY").

20 (b) for testimony given in deposition or in other pretrial or trial
 21 proceedings, that the Party or non-party offering or sponsoring the testimony identify on the
 22 record, before the close of the deposition, hearing, or other proceeding, all protected testimony,
 23 and further specify any portions of the testimony that qualify as "CONFIDENTIAL" or
 24 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY." Any portions so designated
 25 shall thereafter be treated in accordance with the terms of this Order.

26 When it is impractical to identify separately each portion of testimony that is entitled to
 27 protection, and when it appears that substantial portions of the testimony may qualify for
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1 protection, the Party or non-party that sponsors, offers, or gives the testimony may invoke on the
 2 record (before the deposition or proceeding is concluded) a right to have up to thirty (30) days to
 3 identify the specific portions of the testimony as to which protection is sought and to specify the
 4 level of protection being asserted ("CONFIDENTIAL" or "HIGHLY CONFIDENTIAL –
 5 ATTORNEYS' EYES ONLY." Only those portions of the testimony that are appropriately
 6 designated for protection within the thirty (30) days shall be covered by the provisions of this
 7 Stipulated Protective Order. All parties shall treat the entire deposition transcript as designated
 8 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" for thirty
 9 (30) days after the testimony is given.

10 Transcript pages containing Protected Material must be separately bound by the court
 11 reporter, who must affix to the top of each such page the legend "CONFIDENTIAL" or
 12 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY," as instructed by the Party or
 13 non-party offering or sponsoring the witness or presenting the testimony.

14 (c) for information produced in some form other than documentary,
 15 and for any other tangible items, that the Producing Party affix in a prominent place on the
 16 exterior of the container or containers in which the information or item is stored the legend
 17 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY." If only
 18 portions of the information or item warrant protection, the Producing Party, to the extent
 19 practicable, shall identify the protected portions specifying whether they qualify as
 20 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY." If it is
 21 not feasible to mark the item as required by this Order, the item shall be designated by the
 22 Designating Party by informing the Receiving Party of the designation in writing.

23 5.3. Inadvertent Failures to Designate. If timely corrected, an inadvertent
 24 failure to designate qualified information or items as "CONFIDENTIAL" or "HIGHLY
 25 CONFIDENTIAL – ATTORNEYS' EYES ONLY" does not, standing alone, waive the
 26 Designating Party's right to secure protection under this Order for such material. If material is
 27 appropriately designated as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL –
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1 ATTORNEYS' EYES ONLY" after the material was initially produced, the Receiving Party, on
 2 timely notification of the designation, must make reasonable efforts to assure that the material is
 3 treated in accordance with the provisions of this Order, and must use its best efforts to retrieve
 4 any Protected Material from any person not eligible to receive Protected Material under this
 5 Order. If this an inadvertent failure to designate situation should occur, none of the Parties shall
 6 accuse the other of breach of the Protective Order for any reasonable use made of a document
 7 during the time it was incorrectly designated.

8 5.4. Inadvertent or Unintentional Disclosures. Inspection or production of
 9 documents (including physical objects) shall not constitute a waiver of the attorney-client
 10 privilege or work product immunity or any other applicable privilege if, as soon as reasonably
 11 possible after the Producing Party becomes aware of any inadvertent or unintentional disclosure,
 12 the Producing Party designates any such documents as within the attorney-client privilege or
 13 work product immunity or any other such applicable privilege and requests return of those
 14 documents to the Producing Party. Upon request by the Producing Party, the Receiving Party
 15 shall immediately return all copies of claimed inadvertently produced documents. Nothing
 16 herein shall prevent the Receiving Party from challenging the proprietary of the attorney-client
 17 privilege or work product immunity or other applicable privilege designation by submitting a
 18 written challenge to the Court, after returning all copies of the claimed inadvertently-produced
 19 documents. Nothing in this Protective Order is intended to preclude the Parties from challenging
 20 the asserted privilege of said documents in Court or alleging that any privilege has been waived
 21 including that the disclosure of the documents was not inadvertent. Notwithstanding the return
 22 of all copies of claimed inadvertently produced documents, the parties may retain one copy for
 23 purposes of motion practice in Court to challenge the asserted privilege.

24 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

25 6.1. Timing of Challenges. Unless a prompt challenge to a Designating Party's
 26 confidentiality designation is necessary to avoid foreseeable substantial unfairness, unnecessary
 27 economic burdens, or a later significant disruption or delay of the litigation, a Party does not
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1 waive its right to challenge a confidentiality designation by electing not to mount a challenge
2 promptly after the original designation is disclosed.

3 6.2. Meet and Confer. A Party that elects to initiate a challenge to a
4 Designating Party's confidentiality designation must do so in good faith, must advise counsel for
5 the Designating Party of the challenge in writing and identify the documents or information that
6 the Receiving Party contends should be designated differently, and must thereafter confer
7 directly (in voice to voice dialogue; other forms of communication are not sufficient) with
8 counsel for the Designating Party. In conferring, the challenging Party must explain the basis for
9 its belief that the confidentiality designation was not proper and must give the Designating Party
10 an opportunity to review the designated material, to reconsider the circumstances, and, if no
11 change in designation is offered, to explain the basis for the chosen designation. A challenging
12 Party may proceed to the next stage of the challenge process only if it has engaged in this meet
13 and confer process first.

14 6.3. Judicial Intervention. A Party that elects to press a challenge to a
15 confidentiality designation after considering the justification offered by the Designating Party
16 may file and serve a motion under Civil Local Rule 7 (and in compliance with Civil Local Rule
17 79-5, if applicable) that identifies the challenged material and sets forth in detail the basis for the
18 challenge. Each such motion must be accompanied by a competent declaration that affirms that
19 the movant has complied with the meet and confer requirements imposed in the preceding
20 paragraph and that sets forth with specificity the justification for the confidentiality designation
21 that was given by the Designating Party in the meet and confer dialogue.

22 The burden of persuasion in any such challenge proceeding shall be on the Designating
23 Party. Until the court rules on the challenge, all parties shall continue to afford the material in
24 question the level of protection to which it is entitled under the Designating Party's designation.

25 7. ACCESS TO AND USE OF PROTECTED MATERIAL

26 7.1. Basic Principles. A Receiving Party may use Protected Material that is
27 disclosed or produced by another Party or by a non-party in connection with this case only for
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1 prosecuting, defending, or attempting to settle this litigation. Such Protected Material may be
 2 disclosed only to the categories of persons and under the conditions described in this Order.

3 When the litigation has been terminated, a Receiving Party must comply with the provisions of
 4 section 11, below (FINAL DISPOSITION).

5 Protected Material must be stored and maintained by a Receiving Party at a location and
 6 in a secure manner that ensures that access is limited to the persons authorized under this Order.

7 Nothing herein shall, however, restrict a person authorized under this Order from making
 8 working copies, abstracts, digests and analyses of Protected Material for use in connection with
 9 this litigation, and such working copies, abstracts, digests and analyses shall be deemed
 10 Protected Material under the terms of this Order. Any abstract, digest, summary or analysis that
 11 incorporates information designated Protected Material shall bear the same designation as the
 12 original. Nothing herein shall restrict a person authorized under this Order from converting or
 13 translating Protected Material into machine readable form for incorporation into a data retrieval
 14 system used in connection with this action, provided that access to Protected Material, in
 15 whatever form stored or reproduced, shall be limited to persons authorized under this Order.

16 7.2. Disclosure of "CONFIDENTIAL" Information or Items. Unless
 17 otherwise ordered by the court or permitted in writing by the Designating Party, a Receiving
 18 Party may disclose any information or item designated "CONFIDENTIAL" only to:

19 (a) the Receiving Party's Outside Counsel, as defined above, to whom
 20 it is reasonably necessary to disclose the information for this litigation and who have signed the
 21 "Agreement to Be Bound by Protective Order" that is attached hereto as Exhibit A;

22 (b) five (5) officers, directors, and employees (including House
 23 Counsel) of the Receiving Party to whom disclosure is reasonably necessary for this litigation
 24 and who have signed the "Agreement to Be Bound by Protective Order" (Exhibit A);

25 (c) Experts (as defined in this Order) (1) to whom disclosure is
 26 reasonably necessary for this litigation, (2) who have signed the "Agreement to Be Bound by
 27 Protective Order" (Exhibit A), and (3) as to whom the procedures set forth in paragraph 7.3,
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below, have been followed (and accordingly House Counsel is excluded);

(d) the Court and its personnel;

(e) court reporters, translators, interpreters, copy service vendors, their staffs, and Professional Vendors, to whom disclosure is reasonably necessary for this litigation and who have signed the "Agreement to Be Bound by Protective Order" (Exhibit A); and

(f) during their depositions, witnesses in the action to whom disclosure is reasonably necessary and who have signed the "Agreement to Be Bound by Protective Order" (Exhibit A). Pages of transcribed deposition testimony or exhibits to depositions that reveal Protected Material must be separately bound by the court reporter and may not be disclosed to anyone except as permitted under this Stipulated Protective Order.

(g) the author of the document or the original source of the information.

7.3. Procedures for Disclosure of Protected Material to "Experts"

(a) Unless otherwise ordered by the court or agreed in writing by the Designating Party, a Party that seeks to disclose to an "Expert" (as defined in this Order) any Protected Material first must provide written notice to the Designating Party that, (1) sets forth the full name of the Expert and the city and state of his or her primary residence, (2) attaches a copy of the Expert's current resume, (3) identifies the Expert's current employer(s), (4) identifies each person or entity from whom the Expert has received compensation for work in his or her areas of expertise or to whom the expert has provided professional services at any time during the preceding five (5) years, and (5) identifies (by name and number of the case, filing date, and location of court) any litigation in connection with which the Expert has provided any professional services during the preceding five (5) years.

(b) A Party that provides the information specified in the preceding paragraph may disclose the subject Protected Material to the identified Expert unless, within seven (7) court days of delivering the request, the Party receives a written objection from the Designating Party. Any such objection must set forth in detail the grounds on which it is based.

1 No Protected Material of the Producing Party shall be disclosed to the Expert until after
 2 expiration of the foregoing notice period. If, however, during the notice period the Producing
 3 Party serves a written objection upon the Receiving Party desiring to disclose Protected Material
 4 to the Expert, there shall be no disclosure of Protected Material to the Expert pending resolution
 5 of the objection.

6 (c) A Party that receives a timely written objection must meet and
 7 confer with the Designating Party (through direct voice to voice dialogue) to try to resolve the
 8 matter by agreement within 15 days. If no agreement is reached, the Party objecting to the
 9 disclosure to the Expert must file a motion objecting to the disclosure within 10 days as provided
 10 in Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if applicable) seeking
 11 permission from the court to do so. Any such motion must describe the circumstances with
 12 specificity, set forth in detail the reasons for which the disclosure to the Expert is improper,
 13 assess the risk of harm that the disclosure would entail and suggest any additional means that
 14 might be used to reduce that risk. In addition, any such motion must be accompanied by a
 15 competent declaration in which the movant describes the parties' efforts to resolve the matter by
 16 agreement (*i.e.*, the extent and the content of the meet and confer discussions) and sets forth the
 17 reasons advanced by the Designating Party for its refusal to approve the disclosure.

18 In any such proceeding the Party opposing disclosure to the Expert shall bear the burden
 19 of proving that the risk of harm that the disclosure would entail (under the safeguards proposed)
 20 outweighs the Receiving Party's need to disclose the Protected Material to its Expert.

21 (d) If the Producing Party fails to file an objection with this seven (7)
 22 day period, then any objection to the disclosure to the Expert is waived, and the specifically
 23 identified Protected Material may thereafter be disclosed to the Expert.

24 7.4. Disclosure of "HIGHLY CONFIDENTIAL - ATTORNEYS' EYES
 25 ONLY" Information or Items. Unless otherwise ordered by the court or permitted in writing by
 26 the Designating Party, a Receiving Party may disclose any information or item designated
 27 "HIGHLY CONFIDENTIAL — ATTORNEYS' EYES ONLY" only to:
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(a) the Receiving Party's Outside Counsel in this action, as defined above, to whom it is reasonably necessary to disclose the information for this litigation and who have signed the "Agreement to Be Bound by Protective Order" that is attached hereto as Exhibit A;

(b) Experts (as defined in this Order) (1) to whom disclosure is reasonably necessary for this litigation and (2) who have signed the "Agreement to Be Bound by Protective Order" (Exhibit A) , and (3) as to whom the procedures set forth in paragraph 7.3, below, have been followed;

(c) the Court and its personnel;

(d) court reporters, their staffs, and Professional Vendors to whom disclosure is reasonably necessary for this litigation and who have signed the "Agreement to Be Bound by Protective Order" (Exhibit A); and

(e) the author of the document or the original source of the information.

8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER LITIGATION

If a Receiving Party is served with a subpoena or an order issued in other litigation that would compel disclosure of any information or items designated in this action as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY," the Receiving Party must so notify the Designating Party, in writing (by fax, if possible) immediately and in no event more than three (3) court days after receiving the subpoena or order. Such notification must include a copy of the subpoena or court order.

The Receiving Party also must immediately inform in writing the Party who caused the subpoena or order to issue in the other litigation that some or all the material covered by the subpoena or order is the subject of this Protective Order. In addition, the Receiving Party must deliver a copy of this Stipulated Protective Order promptly to the Party in the other action that caused the subpoena or order to issue.

1 The purpose of imposing these duties is to alert the interested parties to the existence of
 2 this Protective Order and to afford the Designating Party in this case an opportunity to try to
 3 protect its confidentiality interests in the court from which the subpoena or order issued. The
 4 Designating Party shall bear the burdens and the expenses of seeking protection in that court of
 5 its confidential material – and nothing in these provisions should be construed as authorizing or
 6 encouraging a Receiving Party in this action to disobey a lawful directive from another court.

7 **9. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

8 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected
 9 Material to any person or in any circumstance not authorized under this Stipulated Protective
 10 Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the
 11 unauthorized disclosures, (b) use its best efforts to retrieve all copies of the Protected Material,
 12 (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of
 13 this Order, and (d) request such person or persons to execute the “Acknowledgment and
 14 Agreement to Be Bound” that is attached hereto as Exhibit A.

15 **10. FILING PROTECTED MATERIAL**

16 10.1. Without written permission from the Designating Party or a court order
 17 secured after appropriate notice to all interested persons, a Party may not file in the public record
 18 in this action any Protected Material. A Party that seeks to file under seal any Protected Material
 19 must comply with Civil Local Rule 79-5.

20 **11. FINAL DISPOSITION**

21 Unless otherwise ordered or agreed in writing by the Producing Party, within sixty (60)
 22 days after the final termination of this action, each Receiving Party including retained experts
 23 must return all Protected Material to the Producing Party. As used in this subdivision, “all
 24 Protected Material” includes all copies, abstracts, compilations, summaries or any other form of
 25 reproducing or capturing any of the Protected Material. With permission in writing from the
 26 Designating Party, the Receiving Party may destroy some or all of the Protected Material instead
 27 of returning it. Such permission shall not be unreasonably withheld. Whether the Protected
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Material is returned or destroyed, the Receiving Party must submit a written certification to the Producing Party (and, if not the same person or entity, to the Designating Party) by the sixty (60) day deadline that identifies (by category, where appropriate) all the Protected Material that was returned or destroyed and that affirms that the Receiving Party has not retained any copies, abstracts, compilations, summaries or other forms of reproducing or capturing any of the Protected Material. Notwithstanding this provision, Counsel are entitled to retain an archival copy of all pleadings, motion papers, transcripts, legal memoranda, correspondence or attorney work product, even if such materials contain Protected Material. Any such archival copies that contain or constitute Protected Material remain subject to this Protective Order as set forth in Section 4 (DURATION), above.

12. MISCELLANEOUS

12.1. Right to Further Relief. Nothing in this Order abridges the right of any person to seek its modification by the Court in the future.

12.2. Right to Assert Other Objections. By stipulating to the entry of this Protective Order no Party waives any right it otherwise would have to object to disclosing or producing any information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no Party waives any right to object on any ground to use in evidence of any of the material covered by this Protective Order.

12.3. Federal Rules of Civil Procedure. Nothing herein shall alter or change in any way the discovery provisions of the Federal Rules of Civil Procedure. Identification of any individual pursuant to this Order does not make that individual available for deposition or any other form of discovery outside of the restrictions and procedures of the Federal Rules of Civil Procedure, the Local Rules, and the Court's Orders.

12.4. Non-party Production. A non-party producing information or material voluntarily or pursuant to a subpoena or a court order may designate material or information with the appropriate designation pursuant to the terms of this Order. A non-party's use of this Order to protect its Protected Material does not entitle that non-party access to Protected Material

1 produced by any party in this case.

2 12.5. Use of Own Protected Material. Nothing in this Order shall restrict a party
3 or non-party from using its own Protected Material in any manner.

4 12.6. Disclosure of Signed "Agreement to be Bound by Protective Order". A
5 copy of all signed "Agreements to be Bound by Protective Order" (Exhibit A) shall be
6 maintained by counsel of record for the Receiving Party. Upon written notice of an alleged
7 violation of this protective order, the Receiving Party shall send a copy of all signed
8 "Agreements to be Bound by Protective Order" to the Designating Party.

9 12.7. Waiver of Notice. Any notice requirement herein may be waived, in
10 whole or in part, but only by a writing signed by an attorney of record for the party against whom
11 such waiver will be effective.

12 12.8. New Parties. In the event that a new party is added, substituted, or
13 brought in, this Order will be binding on and inure to the benefit of the new party, subject to the
14 right of the new party to seek relief from or modification of this Order.

15 12.9. Choice of Law. The United States District Court for the Northern District
16 of California, as well as those Courts having appellate jurisdiction therefrom, are responsible for
17 the interpretation and enforcement of this Order. All disputes concerning Protected Material
18 produced under the protection of this Order shall be resolved by such courts.

19 12.10. Nothing in this Order shall be construed as a basis for withholding
20 material falling within the scope of this Order or withholding information that is Protected
21 Material. Nor shall anything in this Order be construed to bar or otherwise restrict Counsel from
22 rendering advice to a client to this litigation with respect to this action and from referring to or
23 relying upon an examination of materials produced. In rendering such advice or in otherwise
24 communicating to the client, the person shall not disclose the specific content of any Protected
25 Material unless such disclosure is permitted under the terms of this Order.

26 13. No Contract: This Protective Order is for the Court's consideration and approval
27 as an order. It shall not be construed to create a contract between the parties or between the
28

1 parties and their respective counsel.

2 14. No Prejudice: Unless all parties stipulate otherwise, evidence of the existence or
3 nonexistence of a designation under this Protective Order shall not be admissible for any purpose
4 during any proceeding on the merits of this action.

5 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD


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7
8 DATED: November 17, 2006

By:


MICHAEL J. SONG
FOLEY & LARDNER LLP
Attorneys for Plaintiff Nichia Corp.

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11
12 DATED: November 15, 2006

By:


BETH H. PARKER
BINGHAM MCCUTCHEN LLP
Attorneys for Defendants Seoul
Semiconductor, Ltd. and Seoul
Semiconductor, Inc.

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17 PURSUANT TO STIPULATION, IT IS SO ORDERED.

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20 DATED: November 22, 2006

By:



HONORABLE MAXINE M. CHESNEY
United States District Judge

EXHIBIT A**ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND**

I, _____ [print or type full name], of _____
 _____ [print or type full address], declare under penalty of
 perjury that I have read in its entirety and understand the Stipulated Protective Order that was
 issued by the United States District Court for the Northern District of California on [date] in the
 case of Nichia Corporation v. Seoul Semiconductor Co., Ltd., Seoul Semiconductor, Inc.,
 Creative Technology, Ltd., Creative Labs, Inc., and Creative Holdings, Inc., 06-CV-0162
 (MMC). I agree to comply with and to be bound by all the terms of this Stipulated Protective
 Order and I understand and acknowledge that failure to so comply could expose me to sanctions
 and punishment in the nature of contempt. I solemnly promise that I will not disclose in any
 manner any information or item that is subject to this Stipulated Protective Order to any person
 or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the
 Northern District of California for the purpose of enforcing the terms of this Stipulated
 Protective Order, even if such enforcement proceedings occur after termination of this action.

I hereby appoint _____ [print or type full name] of _____
 _____ [print or type full address and telephone number] as my
 California agent for service of process in connection with this action or any proceedings related
 to enforcement of this Stipulated Protective Order.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____

Stipulated Protective Order

3:06-CV-0162 (MMC)